AMENDED IN SENATE APRIL 17, 2012

SENATE BILL No. 1467

Introduced by Senator DeSaulnier
(Coauthor: Senator Vargas)
(Coauthor: Assembly Member Hueso)

February 24, 2012

An act to add Division 3.5 (commencing with Section 28960) to Title 4 of the Corporations Code, *and to repeal and amend Sections 17053.80 and 23623 of the Revenue and Taxation Code,* relating to business investment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1467, as amended, DeSaulnier. Business investment: tax credits.

Existing law imposes a gross premiums tax on insurers in lieu of other taxes, with certain exceptions. ~~Existing law provides for credits against tax liability for certain taxpayers meeting various requirements.~~ The Capital Access Company Law provides for licensing and regulation by the Commissioner of Corporations of capital access companies, which provide risk capital and management assistance to business entities.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws, including a credit in an amount equal to $3,000, prorated as provided, for each full-time employee hired during the taxable year by a qualified employer, as defined. Existing law caps the total amount of credit which may be allocated under those provisions to $400,000,000.

This bill would enact the California ~~Capital Access Company Credit Act~~ *Jobs Act of 2012*, which would provide an investment tax credit against insurer premium tax liability to participating investors, as defined, and would provide for sale or transfer of the tax credits to other

parties. The bill would provide for a maximum amount of tax credits *under the act* of $200,000,000, which could be claimed over specified tax years and carried forward until tax year 2037, *and would also cap the total amount of the credit which may be allocated under existing law provisions authorizing a credit for the hire of full-time employees by qualified employers and the credit authorized under this act to $400,000,000*. The bill would provide for the ~~Business, Transportation and Housing Agency~~ *Department of Insurance, California Organized Insurance Network (DI/COIN)* to, among other things, qualify applicants as qualified capital access companies, which would receive investment commitments from participating investors and make qualified investments in qualified businesses, subject to approval by ~~the agency~~ *DI/COIN*. The bill would specify the process for qualified distributions to be made by the qualified capital access company to private investors and the state, with the state share to be deposited in the General Fund or in the Economic Development Fund, which would be created by the bill, as specified. The bill would provide for certain application and certification fees, and impose certain penalties, and provide for these revenues to be deposited in the Economic Development Fund. The bill would define various terms for purposes of the act.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of ⅔ of the membership of each house of the Legislature.

Vote: ~~majority~~ *⅔*. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Division 3.5 (commencing with Section 28960) is added to Title 4 of the Corporations Code, to read:

DIVISION 3.5. CALIFORNIA ~~CAPITAL ACCESS~~ *JOBS*~~COMPANY CREDIT~~ ACT *OF 2012*

28960. This division shall be known and may be cited as the ~~California Capital Access Company Credit Act.~~ *California Jobs Act of 2012.*

28961. As used in this division:

(a) (1) "Affiliate" means either of the following:

(A) Any person who, directly or indirectly, beneficially owns, controls, or holds power to vote 15 percent or more of the outstanding voting securities or other voting ownership interest of a qualified capital access company or insurance company.

(B) Any person, 15 percent or more of whose outstanding voting securities or other voting ownership interests are directly or indirectly beneficially owned, controlled, or held with power to vote by a qualified capital access company or insurance company.

(2) Notwithstanding anything in this subdivision, an investment by a participating investor in a qualified capital access company pursuant to an allocation of investment tax credits under this ~~section~~ *division* does not cause that qualified capital access company to become an affiliate of that participating investor.

(b) "Allocation amount" means the total amount of tax credits allocated to the participating investors in a qualified capital access company pursuant to this division.

(c) "Allocation date" means the date on which investment tax credits under Section 28964 are allocated to the participating investor of a qualified capital access company under this division.

(d) "Base investment amount" means *not less than* fourteen million dollars ($14,000,000) in the case of a qualified capital access company receiving one allocation of tax credits and twenty-eight million dollars ($28,000,000) in the case of a qualified capital access company receiving two allocations of tax credits, which shall be available in cash or cash equivalents immediately following the investment by a qualified capital access company's ~~participating~~ *private* investors ~~and its owners~~ *on a one-to-one matching basis*; provided, however, that a contract for payment of cash or cash equivalents over a specified period of time *by the participating investor* shall also be sufficient.

(e) "Capital access company" means a venture capital fund licensed by the Department of Corporations under the Capital Access Company Law (Division 3 (commencing with Section 28000)).

(f) "Designated capital" means an amount of money that is invested by a participating investor in a qualified capital access company.

(g) "DI/COIN" means the Department of Insurance, California Organized Insurance Network.

~~(g)~~

(h) "Distributable cash" means the excess of the sum of all cash receipts of all kinds over cash disbursements for operating expenses and qualified distributions, or reserves therefor. The general partner may, at its sole discretion, retain reasonable amounts for working capital and reserves for contingencies and reasonably foreseeable obligations.

~~(h)~~

(i) "Investment period" means the period January 1, 2013, to December 31, 2021, inclusive.

~~(i)~~

(j) "Participating investor" means any insurance company required to pay the gross premiums tax pursuant to Part 7 of Division 2 (commencing with Section 12001) of the Revenue and Taxation Code that contributes designated capital pursuant to this division.

~~(j)~~

(k) "Percentage interest" means, with respect to a private investor, the ratio of the private investor's capital contribution to the total capital contributions of all private investors, as adjusted from time to time.

~~(k)~~

(l) "Person" means a natural person or an entity, including, but not limited to, a corporation, general or limited partnership, trust, or limited liability company.

~~(l)~~

(m) "Private investor" means any investor in a capital access company other than a participating investor or the manager of a capital access company.

~~(m)~~

(n) "Profit share percentage" means allocation of distributable cash as provided in Section 28968.

~~(n)~~

(o) (1) "Qualified business" means a business that is independently owned and operated and meets all of the following requirements:

(A) It is headquartered in California, its principal business operations are located *in* California, and at least 60 percent of its employees are located in California.

(B) It has not more than 100 employees.

(C) It is not principally engaged in professional services provided by accountants, ~~doctors,~~ *physicians, dentists,* or lawyers; banking or lending; real estate development; insurance; oil or gas exploration; or direct gambling activities.

(D) It is not a franchise of, and has no financial relationship with, a qualified capital access company or any affiliate of a qualified capital access company prior to a qualified capital access company's first qualified investment in the business; provided, however, that if ~~it~~ *the qualified capital access company* continues to fulfill its fiduciary duty to the program established by this division, then the business may be one in which the qualified capital access company, its affiliates, or a separate fund managed by the managers of the capital access company was invested prior to the allocation of investment tax credits to the capital access company; and provided, further, that if the qualified capital access company continues to fulfill its fiduciary duty to the program established by this division, then the business may be one in which a separate fund managed by the managers of the qualified capital access company makes an investment after the investment by the qualified capital access company.

(2) (A) The requirements of paragraph (1) may, in the alternative, be met if the qualified capital access company represents in its application for funding approval that the business will, in the definitive purchase agreements to be executed upon closing, agree to both of the following:

(i) Commence locating its headquarters, its principal business operations, and at least 60 percent of its employees in California.

(ii) Complete all of the required elements of paragraph (1) within 12 months after closing.

(B) If the business fails to fulfill the commitments specified in subparagraph (A), ~~the Secretary of Business, Transportation and Housing~~ *DI/COIN* may, in ~~the secretary's~~ *its* sole discretion, impose a penalty on the qualified capital access company. Notwithstanding anything in this subdivision, the penalty shall be imposed such that the profit share percentage, as otherwise defined in Section 28968, shall be amended such that the profit share percentage distributed to the state by the qualified capital access company shall equal ~~80~~ *50* percent of any distributions arising from the qualified capital access company's investments~~, other than qualified distributions or distributions or repayments of capital~~

~~contributions by the qualified capital access company's equity owners who are not participating investors.~~ *instead of 40 percent as provided in subparagraph (C) of paragraph (1) of subdivision (a) of Section 28968. The additional 10 percent shall result from a reduction in the profit share percentage of the qualified capital access company manager from 20 percent to 10 percent.*

(3) A business classified as a qualified business at the time of the first qualified investment in the business shall remain classified as a qualified business and may receive continuing qualified investments from any qualified capital access company; provided, however, that the business continues to meet the requirements of paragraph (1).

~~(o)~~

(p) "Qualified capital access company" means a qualified capital access company that has been approved to receive an investment tax credit allocation.

~~(p)~~

(q) "Qualified distribution" means any distribution or payment by a qualified capital access company other than pursuant to a profit allocation in connection with any of the following:

(1) Costs and expenses of forming, syndicating, and organizing the qualified capital access company, including fees paid for professional services; provided, however, that startup costs shall not exceed 2 percent of the total capital of the capital access company or five hundred thousand dollars ($500,000).

(2) An annual management fee to offset the costs and expenses of managing and operating a qualified capital access company; provided, however, that in the first four years following its allocation date, a qualified capital access company's management fee shall not exceed 2 percent of its base investment amount per annum and in the fifth to 10th years, inclusive, following its allocation date, a qualified capital access company's management fee per annum shall not exceed 2 percent of the lesser of its base investment amount or its qualified investments.

(3) Reasonable and necessary fees in accordance with industry custom for ongoing professional services, including, but not limited to, legal and accounting services related to the operation of a qualified capital access company, not including any lobbying or governmental relations; provided, however, professional service

fees shall not exceed two hundred thousand dollars ($200,000) annually.

(4) An increase or projected increase in federal or state taxes of the private investors of a qualified capital access company resulting from the earnings or other tax liability of a qualified capital access company to the extent that the increase is related to the ownership, management, or operation of a qualified capital access company; provided, however, that those distributions shall not exceed that actual tax liability due and payable on that investor's actual return. Documents supporting the payments shall be provided to ~~the Franchise Tax Board~~ *DI/COIN* upon request.

~~(q)~~

(r) "Qualified investment" means the investment of cash by a qualified capital access company in a qualified business for the purchase of equity, equity options, warrants, or debt convertible to equity. An investment by a qualified capital access company in a debt instrument whose terms are substantially equivalent to terms typically found in debt financing provided by banks to profitable companies, such as security interests in tangible assets with readily ~~discernable~~ *discernible* orderly liquidation value in excess of the loan amount or personal guarantees, shall not be deemed as a qualified investment. Qualified investments determined to be seed or early stage investments shall be increased by 300 percent for purposes of determining if a qualified capital access company meets the investment thresholds in Section 28965.

~~(r)~~

(s) "Seed or early stage investment" means an investment in a company that has a product or service in testing or pilot production that may or may not be commercially available. The company may or may not be generating revenues and may have been in business less than three years at the time of investment.

~~(s)~~

(t) "State" means the State of California.

~~(t)~~

(u) "State premium tax liability" means any liability incurred by an insurance company under the provisions of Part 7 (commencing with Section 12001) of Division 2 of the Revenue and Taxation Code.

28962. (a) A participating investor shall earn an investment tax credit against its state premium tax liability equal to 100 percent

of the investment tax credit allocated to the participating investor under Section 28964. The participating investor's investment tax credit shall be earned and vested upon making its investment in the qualified capital access company. Beginning January 1, ~~2013,~~ *2014*, a participating investor may claim the investment tax credit as follows:

(1) In tax years 2014, 2015, 2016, and 2017, an amount equal to 15 percent of the investment tax credit allocated to the participating investor.

(2) In tax years 2018, 2019, 2020, and 2021, an amount equal to 10 percent of the investment tax credit allocated to the participating investor.

(b) No participating investor's investment tax credit for any taxable year shall exceed the participating investor's state premium tax liability for that year. If the amount of the investment tax credit determined under this section for any taxable year exceeds the state premium tax liability, then the excess shall be an investment tax credit carryover to future taxable years until tax year 2037. Investment tax credits may be used in connection with both final payments and prepayments of a participating investor's state premium tax liability. Investment tax credits may be sold or otherwise transferred by a participating investor to another entity, which may likewise resell or transfer the tax credits, provided that ~~the Franchise Tax Board~~ *DI/COIN* receives written notification within 30 days of any sale or transfer *and approves the transferee as a participating investor*. However, investment tax credits are not refundable.

(c) A participating investor claiming an investment tax credit under this section is not required to pay any additional retaliatory tax levied as a result of claiming the investment tax credit.

(d) A participating investor is not required to reduce the amount of tax pursuant to the state premium tax liability included by the participating investor in connection with ratemaking for any insurance contract written in this state because of a reduction in the participating investor's tax liability based on the investment tax credit allowed under this section.

(e) If the taxes paid by a participating investor with respect to its state premium tax liability constitute a credit against any other tax that is imposed by this state, the participating investor's credit against the other tax shall not be reduced by virtue of the reduction

in the participating investor's tax liability based on the investment tax credit allowed under this section.

28963. (a) ~~The Business, Transportation and Housing Agency, in consultation with the Franchise Tax Board,~~ *DI/COIN* shall provide a standardized format for persons attempting to qualify as a qualified capital access company.

(b) An applicant for qualification is required to do all of the following:

(1) File an application with ~~the Business, Transportation and Housing Agency~~ *DI/COIN*.

(2) Pay a nonrefundable application fee of seven thousand five hundred dollars ($7,500) at the time of filing the application, to be deposited in the Economic Development Fund.

(3) Submit, as part of its application, an audited balance sheet that contains an unqualified opinion of an independent certified public accountant issued not more than 60 days before the application date that states that the applicant has an equity capitalization of five million dollars ($5,000,000) or more in the form of unencumbered cash, marketable securities, or other liquid assets.

(4) Submit, as part of its application, a certification from the Commissioner of Corporations that the applicant is a capital access company licensed under the California Capital Access Company Law (Division 3 (commencing with Section 28000)).

(c) ~~The Business, Transportation and Housing Agency and the Franchise Tax Board~~ *DI/COIN* shall review the organizational documents of each applicant for certification and determine whether the applicant has satisfied the requirements of this division.

(d) Within 30 days after the receipt of an application, ~~the Business, Transportation and Housing Agency~~ *DI/COIN* shall issue the certification or refuse the certification and communicate in detail to the applicant the grounds for refusal, including suggestions for the removal of those grounds.

(e) ~~The Business, Transportation and Housing Agency~~ *DI/COIN* shall begin accepting applications to become a qualified capital access company by January 31, 2013. All applications ~~must~~ *shall* be submitted to ~~the agency~~ *DI/COIN* no later than October 1, 2013.

28964. (a) ~~The Business, Transportation and Housing Agency, in consultation with the Franchise Tax Board,~~ *DI/COIN* shall

provide a standardized format for a qualified capital access company to apply for the investment tax credits.

(b) Applications shall contain the information as required by ~~the Franchise Tax Board and the Business, Transportation and Housing Agency~~ *DI/COIN*, including statements regarding the ability to obtain the required investment commitments *from private investors*. Each qualified capital access company shall submit irrevocable investment commitments from participating investors and ~~qualified capital access company~~ private investors in an aggregate amount equal to at least the base investment amount not later than November 30, 2013. Qualified capital access companies that are awarded investment tax credits under this chapter based on the asserted ability to raise the required capital shall be subject to a fifty-thousand-dollar ($50,000) penalty for failure to perform. The proceeds from the penalty shall be deposited into the Economic Development Fund to further the state's economic development efforts.

(c) (1) ~~The Franchise Tax Board and the Business, Transportation and Housing Agency,~~ *DI/COIN*, in consultation with the Treasurer, shall review the applications and award the investment tax credits to capital access companies based on the overall strength of their applications using all of the following criteria:

(A) (i) The applicant has at least two investment managers with five or more years of *experience in* investment ~~experience~~ *or mezzanine lending*.

(ii) The applicant has been based, as defined by having a principal office, in the state for at least five years or has at least five years of experience in investing *or mezzanine lending* primarily in California-domiciled companies.

(iii) The applicant's proposed investment strategy for achieving transformational economic development outcomes through focused investments of capital in seed or early stage companies with high-growth potential.

(iv) The applicant's demonstrated ability to lead investment rounds, advise and mentor entrepreneurs, ~~and~~ facilitate follow-on investments, *and execute investment exits*.

(B) ~~Qualified capital~~ *Capital* access companies that do not meet the criteria in clause (ii) of subparagraph (A) may submit a joint application with an entity that meets the criteria set out in clause

(ii) of subparagraph (A) and that application shall be judged based on the combined attributes of the joint application.

(2) The awarding of investment tax credits shall be at the sole discretion of ~~the Franchise Tax Board and the Secretary of Business, Transportation and Housing~~ *DI/COIN*.

(d) *(1)* The aggregate amount of investment tax credits to be allocated to all participating investors of qualified capital access companies under this chapter shall not exceed two hundred million dollars ($200,000,000). The investment tax credits will be awarded in twenty-million-dollar ($20,000,000) allocations. No qualified capital access company, on an aggregate basis with its joint applicants, may apply for more than two twenty-million-dollar ($20,000,000) allocations. No participating investor, on an aggregate basis with its affiliates, may be allocated more than 25 percent of the maximum amount of investment tax credits authorized hereunder, regardless of whether the claim is made in connection with one or more than one qualified capital access company.

(2) DI/COIN shall not qualify capital access companies or award investment tax credits pursuant to this division on or after the cutoff date established by the Franchise Tax Board pursuant to subdivision (f).

(e) The ~~qualified~~ capital access company *applicant* shall receive, no later than December 31, 2013, a written notice from ~~the Business, Transportation and Housing Agency~~ *DI/COIN* stating whether or not it has been approved as a qualified capital access company and, if applicable, stating the amount of its investment tax credit allocation.

(f) (1) (A) Credit under this division and Sections 17053.80 and 23623 of the Revenue and Taxation Code shall be allowed only for credits claimed on timely filed original returns received by the Franchise Tax Board on or before the cutoff date established by the Franchise Tax Board.

(B) For purposes of this paragraph, the cutoff date shall be the last day of the calendar quarter within which the Franchise Tax Board estimates it will have received timely filed original returns claiming credits under this section and Section 23623 of the Revenue and Taxation Code that cumulatively total four hundred million dollars ($400,000,000) for all taxable years.

(2) The date a return is received shall be determined by the Franchise Tax Board.

(3) (A) The determinations of the Franchise Tax Board with respect to the cutoff date, the date a return is received, and whether a return has been timely filed for purposes of this subdivision may not be reviewed in any administrative or judicial proceeding.

(B) Any disallowance of a credit claimed due to a determination under this subdivision, including the application of the limitation specified in paragraph (1), shall be treated as a mathematical error appearing on the return. Any amount of tax resulting from this disallowance may be assessed by the Franchise Tax Board in the same manner as provided by Section 19051 of the Revenue and Taxation Code.

(4) The Franchise Tax Board shall periodically provide notice on its Internet Web site and to the DI/COIN with respect to the amount of credit under this division and Sections 17053.80 and 23623 of the Revenue and Taxation Code claimed on timely filed original returns received by the Franchise Tax Board.

28965. (a) (1) To maintain its certification, a qualified capital access company shall make qualified investments, as follows:

(A) Within two years after the allocation date, a qualified capital access company shall have invested an amount equal to at least 50 percent of its base investment amount in qualified investments.

(B) Within three years after the allocation date, a qualified capital access company shall have invested an amount equal to at least 70 percent of its base investment amount in qualified investments.

(C) Within four years after the allocation date, a qualified capital access company shall have invested an amount equal to at least 80 percent of its base investment amount in qualified investments.

(D) Within six years or any year thereafter the allocation date, a qualified capital access company shall have invested an amount equal to at least 90 percent of its base investment amount in qualified investments.

(2) Failure to meet the performance measures set out in paragraph (1) during any calendar year shall result in a two-hundred-fifty-thousand-dollar ($250,000) penalty to be imposed against the qualified capital access company. The proceeds from the penalty shall be deposited into the Economic Development

Fund. Funds related to the investment tax credit shall not be used to pay the penalty.

(b) Prior to making a proposed qualified investment in a specific business, a qualified capital access company shall request from ~~the Business, Transportation and Housing Agency~~ *DI/COIN* a written determination that the proposed investment will qualify as a qualified investment in a qualified business or, if applicable, as a seed or early stage investment. ~~The agency~~ *DI/COIN* shall notify a qualified capital access company within 10 business days from the receipt of a request of its determination. If ~~the agency~~ *DI/COIN* fails to notify the qualified capital access company of its determination within 10 business days, the proposed investment will be deemed to be a qualified investment in a qualified business and, if applicable, as a seed or early stage investment. If ~~the agency~~ *DI/COIN* determines that the proposed investment does not meet the definition of a qualified investment, qualified business, or seed or early stage investment, ~~the department~~ *DI/COIN* may nevertheless consider the proposed investment a qualified investment, or a seed or early stage investment and, if necessary, consider the business a qualified business, if ~~the agency~~ *DI/COIN* determines that the proposed investment will further state economic development.

(c) All designated capital not invested in qualified investments by a qualified capital access company shall be held in an escrow account maintained by the ~~state~~ *Treasurer* and administered through ~~the Business, Transportation and Housing Agency~~ *DI/COIN*.

(d) A qualified capital access company may not invest more than 15 percent of its designated capital in any one qualified business without the specific approval of ~~the Business, Transportation and Housing Agency~~ *DI/COIN*.

(e) Any amounts that have not been invested by the qualified capital access company at the end of the investment period shall be forfeited and paid to the state for deposit in the Economic Development Fund.

(f) No qualified capital access company shall sell any interest in a qualified business to an affiliate unless the qualified capital access company has first obtained written authorization for the sale from ~~the Business, Transportation and Housing Agency~~ *DI/COIN*.

28966. An insurance company, or affiliate of an insurance company, *that is a participating investor* shall not, directly or indirectly, do any of the following:

(a) Beneficially own, whether through rights, options, convertible interest, or otherwise, 15 percent or more of the voting securities or other voting ownership interest of a qualified capital access company.

(b) Manage a qualified capital access company (other than exercising remedies for default).

(c) Control the direction of investments for a qualified capital access company.

28967. Qualified distributions from a qualified capital access company may be made at any time. Distributions other than qualified distributions from a qualified capital access company may be paid out annually or upon designated liquidity events as established by the qualified capital access company. Distributions other than qualified distributions may not reduce the base investment amount during any calendar year. The profit share percentage shall be paid to the state in the same time and manner as all other distributions as provided in Section 28968. Those payments shall be deposited into the General Fund or the Economic Development Fund as provided in Section 28968, as directed by ~~the Secretary of Business, Transportation and Housing~~ *DI/COIN*. Investment capital liquidated during a liquidity event shall be given a one-year redeployment period for purposes of calculating the investment thresholds in Section 28965.

28968. (a) (1) At any time that the qualified capital access company makes distributions of distributable cash, it shall make the distributions in ~~the following~~ profit share percentages *indicated in the following priority, except as provided in subdivision (o) of Section 28961*:

(A) First, 75 percent of distributable cash to the private investors, in proportion to their respective percentage interest, and 25 percent to the state, until each private investor has received cumulative distributions equal to 100 percent of his or her capital contributions. The amount distributed to the state shall be deposited in the General Fund.

(B) Second, 100 percent of distributable cash to the state, until it has received 100 percent of its tax credit revenue loss attributable

to the qualified capital access company. This amount shall be deposited in the General Fund.

(C) Third, 20 percent of distributable cash to the qualified capital access company manager, ~~and 80~~ *40* percent of distributable cash ~~dividend equally between~~ *to* the state, and *40 percent of distributable cash to* the private investors in accordance with their respective percentage ~~interest~~ *interests*. The amount distributed to the state shall be deposited in the Economic Development Fund.

(2) Losses shall be allocated so that 75 percent of realized losses are allocated to the state, and 25 percent are allocated to the private investors in proportion to their respective percentage interest, until distributions of distributable cash has restored the capital accounts of the private investors to zero.

(b) The qualified capital access company and the state shall structure the qualified distributions and distributions of distributable cash and final distributions in a manner that minimizes any related federal tax obligation. To the extent that the profit share distribution to qualified capital access company private investors is less than the state's share, pursuant to the profit share percentage, due to federal income tax liabilities, the final distribution may be adjusted to equalize the post-tax profit share payments made during the investment period.

28969. (a) Each qualified capital access company shall report all of the following to ~~the Business, Transportation and Housing Agency:~~ *DI/COIN:*

(1) As soon as practicable, but no later than 30 days after the receipt of designated capital:

(A) The name of each participating investor from which the designated capital was received, including the participating investor's insurance tax identification number.

(B) The amount of each participating investor's investment of designated capital.

(C) The date on which the designated capital was received.

(2) On an annual basis, on or before January 31 of each year:

(A) The amount of the qualified capital access company's remaining uninvested designated capital at the end of the immediately preceding taxable year.

(B) Whether or not the qualified capital access company has invested more than 15 percent of its total designated capital in any one business.

(C) All qualified investments that the qualified capital access company has made in the previous taxable year, including the number of employees of each qualified business in which it has made investments at the time of the investment and as of December 1 of the preceding taxable year.

(D) For any qualified business where the qualified capital access company no longer has an investment, the qualified capital access company must provide employment figures for that company as of the last day before the investment was terminated.

(3) Other information that ~~the agency~~ *DI/COIN* may reasonably request that will help ~~the agency~~ *DI/COIN* ascertain the impact of the qualified capital access company program, both directly and indirectly, on the economy of the state.

(4) Within 180 days of the close of its fiscal year, annual audited financial statements of the qualified capital access company, which must include the opinion of an independent certified public accountant.

(5) An "agreed upon procedures report" or equivalent regarding the operations of the qualified capital access company.

(b) A qualified capital access company shall pay to ~~the Business, Transportation and Housing Agency~~ *DI/COIN* an annual, nonrefundable certification fee of five thousand dollars ($5,000) on or before April 1, or ten thousand dollars ($10,000) if later. No annual certification fee is required if the payment date is within six months of the date a qualified capital access company is first certified by ~~the agency~~ *DI/COIN*.

(c) Upon satisfying ~~of~~ the requirements of paragraph (1) of subdivision (a) of Section 28965, a qualified capital access company shall provide notice to ~~the Business, Transportation and Housing Agency, and the agency~~ *DI/COIN, and DI/COIN* shall, within 60 days of receipt of the notice, either confirm that the qualified capital access company has satisfied the requirement of that paragraph as of that date or provide notice of noncompliance and an explanation of any existing deficiencies. If ~~the agency~~ *DI/COIN* does not provide such notification within 60 days, the qualified capital access company shall be deemed to have met the requirement of that paragraph.

(d) (1) For the purposes of this subdivision, "key person" means either of the following:

(A) The qualified capital access company's investment managers listed in the qualified capital access company's application under Section 28964.

(B) The individuals on the list of investment managers as has been previously approved by ~~the Business, Transportation and Housing Agency~~ *DI/COIN* under paragraph (2) or otherwise.

(2) A qualified capital access company's success shall be deemed to depend, in particular, on the qualified capital access company's key person or persons. On or before July 1, 2013, each qualified capital access company shall provide to ~~the Business, Transportation and Housing Agency~~ *DI/COIN* a description of the qualified capital access company's procedure for choosing a successor should any key person die, become legally incapacitated, or cease to be involved in the management of the qualified capital access company for more than 90 consecutive days. In the event that a majority of key persons do die, become legally incapacitated, or cease to be involved in the management of the qualified capital access company for more than 90 consecutive days for any reason, ~~the Secretary of Business, Transportation and Housing, in consultation with the Franchise Tax Board and the Treasurer or any other appropriate professional adviser,~~ *DI/COIN* shall determine whether a new individual or individuals will be able to assume the role of key person so that the qualified capital access company's performance will remain unimpaired. If ~~the secretary~~ *DI/COIN* determines, in ~~the secretary's~~ *its* sole discretion, that the key person cannot be adequately replaced and the qualified capital access company's performance therefor will be impaired, then any funds not already invested by the qualified capital access company shall be deposited into an escrow account unless ~~the Franchise Tax Board certifies,~~ *DI/COIN determines* that the total amount of payments deposited in the General Fund under this division equals or exceeds the total amount of revenue foregone pursuant to the credits used as provided in Section 28962. If ~~the Franchise Tax Board~~ *DI/COIN* has made that determination, then any funds not already invested by the qualified capital access company shall be deposited into the Economic Development Fund to further support the state's economic development efforts.

28970. (a) ~~The Business, Transportation and Housing Agency~~ *DI/COIN* shall conduct an annual review of each qualified capital access company to determine if it is abiding by the requirements

of the program and to ensure that no investments have been made in violation of this division. The cost of the annual review shall be paid by each qualified capital access company according to a reasonable fee schedule adopted by ~~the agency~~ *DI/COIN*.

(b) ~~The agency~~ *DI/COIN* shall provide the qualified capital access company a summary of findings including any areas of noncompliance. The qualified capital access company shall have 60 days to cure any areas of noncompliance. Failure to cure the areas of noncompliance within 60 days shall result in a penalty of ten thousand dollars ($10,000) per day until the noncompliance is cured. The proceeds from the penalty shall be deposited into the Economic Development Fund to further the state's economic development efforts. Funds related to the investment tax credit shall not be used to pay the penalty imposed under this section.

(c) To promote openness and transparency, a copy of each annual report received by ~~the Business, Transportation and Housing Agency~~ *DI/COIN* pursuant to this section shall be posted on ~~the agency's~~ *DI/COIN's* Internet Web site.

(d) ~~The Business, Transportation and Housing Agency~~ *DI/COIN* shall provide the Treasurer, upon request, a copy of any written findings made in connection with the annual review required under subdivision (a) and a copy of the summary of findings provided to the qualified capital access company pursuant to subdivision (b).

28971. The Economic Development Fund is hereby created in the State Treasury. Money in the fund from application fees pursuant to paragraph (2) of subdivision (b) of Section 28963 and from recertification fees pursuant to subdivision (b) of Section 28969 shall be available, upon appropriation by the Legislature, for administration of this division. Money in the fund from penalties imposed pursuant to this division or from qualified distributions pursuant to Section 28968 shall be available, upon appropriation by the Legislature, to further the state's economic development efforts, as specified by the Legislature.

SEC. 2. Section 17053.80 of the Revenue and Taxation Code, as added by Section 3 of Chapter 10 of the Third Extraordinary Session of the Statutes of 2009, is repealed.

~~17053.80. (a) For each taxable year beginning on or after January 1, 2009, there shall be allowed as a credit against the "net tax," as defined in Section 17039, three thousand dollars ($3,000)~~

~~for each net increase in qualified full-time employees, as specified in subdivision (c), hired during the taxable year by a qualified employer.~~

~~(b) For purposes of this section:~~

~~(1) "Acquired" includes any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.~~

~~(2) "Qualified full-time employee" means:~~

~~(A) A qualified employee who was paid qualified wages by the qualified employer for services of not less than an average of 35 hours per week.~~

~~(B) A qualified employee who was a salaried employee and was paid compensation during the taxable year for full-time employment, within the meaning of Section 515 of the Labor Code, by the qualified employer.~~

~~(3) A "qualified employee" shall not include any of the following:~~

~~(A) An employee certified as a qualified employee in an enterprise zone designated in accordance with Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.~~

~~(B) An employee certified as a qualified disadvantaged individual in a manufacturing enhancement area designated in accordance with Section 7073.8 of the Government Code.~~

~~(C) An employee certified as a qualified employee in a targeted tax area designated in accordance with Section 7097 of the Government Code.~~

~~(D) An employee certified as a qualified disadvantaged individual or a qualified displaced employee in a local agency military base recovery area (LAMBRA) designated in accordance with Chapter 12.97 (commencing with Section 7105) of Division 7 of Title 1 of the Government Code.~~

~~(E) An employee whose wages are included in calculating any other credit allowed under this part.~~

~~(4) "Qualified employer" means a taxpayer that, as of the last day of the preceding taxable year, employed a total of 20 or fewer employees.~~

~~(5) "Qualified wages" means wages subject to Division 6 (commencing with Section 13000) of the Unemployment Insurance Code.~~

~~(6) "Annual full-time equivalent" means either of the following:~~

~~(A) In the case of a full-time employee paid hourly qualified wages, "annual full-time equivalent" means the total number of hours worked for the taxpayer by the employee (not to exceed 2,000 hours per employee) divided by 2,000.~~

~~(B) In the case of a salaried full-time employee, "annual full-time equivalent" means the total number of weeks worked for the taxpayer by the employee divided by 52.~~

~~(c) The net increase in qualified full-time employees of a qualified employer shall be determined as provided by this subdivision:~~

~~(1) (A) The net increase in qualified full-time employees shall be determined on an annual full-time equivalent basis by subtracting from the amount determined in subparagraph (C) the amount determined in subparagraph (B).~~

~~(B) The total number of qualified full-time employees employed in the preceding taxable year by the taxpayer and by any trade or business acquired by the taxpayer during the current taxable year.~~

~~(C) The total number of full-time employees employed in the current taxable year by the taxpayer and by any trade or business acquired during the current taxable year.~~

~~(2) For taxpayers who first commence doing business in this state during the taxable year, the number of full-time employees for the immediately preceding prior taxable year shall be zero.~~

~~(d) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding seven years if necessary, until the credit is exhausted.~~

~~(e) Any deduction otherwise allowed under this part for qualified wages shall not be reduced by the amount of the credit allowed under this section.~~

~~(f) For purposes of this section:~~

~~(1) All employees of the trades or businesses that are treated as related under either Section 267, 318, or 707 of the Internal Revenue Code shall be treated as employed by a single taxpayer.~~

~~(2) In determining whether the taxpayer has first commenced doing business in this state during the taxable year, the provisions of subdivision (f) of Section 17276, without application of paragraph (7) of that subdivision, shall apply.~~

~~(g) (1) (A) Credit under this section and Section 23623 shall be allowed only for credits claimed on timely filed original returns~~

~~received by the Franchise Tax Board on or before the cut-off date established by the Franchise Tax Board.~~

~~(B) For purposes of this paragraph, the cut-off date shall be the last day of the calendar quarter within which the Franchise Tax Board estimates it will have received timely filed original returns claiming credits under this section and Section 23623 that cumulatively total four hundred million dollars ($400,000,000) for all taxable years.~~

~~(2) The date a return is received shall be determined by the Franchise Tax Board.~~

~~(3) (A) The determinations of the Franchise Tax Board with respect to the cut-off date, the date a return is received, and whether a return has been timely filed for purposes of this subdivision may not be reviewed in any administrative or judicial proceeding~~

~~(B) Any disallowance of a credit claimed due to a determination under this subdivision, including the application of the limitation specified in paragraph (1), shall be treated as a mathematical error appearing on the return. Any amount of tax resulting from such disallowance may be assessed by the Franchise Tax Board in the same manner as provided by Section 19051.~~

~~(4) The Franchise Tax Board shall periodically provide notice on its Web site with respect to the amount of credit under this section and Section 23623 claimed on timely filed original returns received by the Franchise Tax Board.~~

~~(h) (1) The Franchise Tax Board may prescribe rules, guidelines or procedures necessary or appropriate to carry out the purposes of this section, including any guidelines regarding the limitation on total credits allowable under this section and Section 23623 and guidelines necessary to avoid the application of paragraph (2) of subdivision (f) through split-ups, shell corporations, partnerships, tiered ownership structures, or otherwise.~~

~~(2) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to this section.~~

~~(i) This section shall remain in effect only until December 1 of the calendar year after the year of the cut-off date, and as of that December 1 is repealed.~~

SEC. 3. Section 17053.80 of the Revenue and Taxation Code, as added by Section 3 of Chapter 17 of the Third Extraordinary Session of the Statutes of 2009, is amended to read:

17053.80. (a) For each taxable year beginning on or after January 1, 2009, there shall be allowed as a credit against the "net tax," as defined in Section 17039, three thousand dollars ($3,000) for each net increase in qualified full-time employees, as specified in subdivision (c), hired during the taxable year by a qualified employer.

(b) For purposes of this section:

(1) "Acquired" includes any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(2) "Qualified full-time employee" means:

(A) A qualified employee who was paid qualified wages by the qualified employer for services of not less than an average of 35 hours per week.

(B) A qualified employee who was a salaried employee and was paid compensation during the taxable year for full-time employment, within the meaning of Section 515 of the Labor Code, by the qualified employer.

(3) A "qualified employee" shall not include any of the following:

(A) An employee certified as a qualified employee in an enterprise zone designated in accordance with Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(B) An employee certified as a qualified disadvantaged individual in a manufacturing enhancement area designated in accordance with Section 7073.8 of the Government Code.

(C) An employee certified as a qualified employee in a targeted tax area designated in accordance with Section 7097 of the Government Code.

(D) An employee certified as a qualified disadvantaged individual or a qualified displaced employee in a local agency military base recovery area (LAMBRA) designated in accordance with Chapter 12.97 (commencing with Section 7105) of Division 7 of Title 1 of the Government Code.

(E) An employee whose wages are included in calculating any other credit allowed under this part.

(4) "Qualified employer" means a taxpayer that, as of the last day of the preceding taxable year, employed a total of 20 or fewer employees.

(5) "Qualified wages" means wages subject to Division 6 (commencing with Section 13000) of the Unemployment Insurance Code.

(6) "Annual full-time equivalent" means either of the following:

(A) In the case of a full-time employee paid hourly qualified wages, "annual full-time equivalent" means the total number of hours worked for the taxpayer by the employee (not to exceed 2,000 hours per employee) divided by 2,000.

(B) In the case of a salaried full-time employee, "annual full-time equivalent" means the total number of weeks worked for the taxpayer by the employee divided by 52.

(c) The net increase in qualified full-time employees of a qualified employer shall be determined as provided by this subdivision:

(1) (A) The net increase in qualified full-time employees shall be determined on an annual full-time equivalent basis by subtracting from the amount determined in subparagraph (C) the amount determined in subparagraph (B).

(B) The total number of qualified full-time employees employed in the preceding taxable year by the taxpayer and by any trade or business acquired by the taxpayer during the current taxable year.

(C) The total number of full-time employees employed in the current taxable year by the taxpayer and by any trade or business acquired during the current taxable year.

(2) For taxpayers who first commence doing business in this state during the taxable year, the number of full-time employees for the immediately preceding prior taxable year shall be zero.

(d) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding seven years if necessary, until the credit is exhausted.

(e) Any deduction otherwise allowed under this part for qualified wages shall not be reduced by the amount of the credit allowed under this section.

(f) For purposes of this section:

(1) All employees of the trades or businesses that are treated as related under either Section 267, 318, or 707 of the Internal Revenue Code shall be treated as employed by a single taxpayer.

(2) In determining whether the taxpayer has first commenced doing business in this state during the taxable year, the provisions of subdivision (f) of Section 17276, without application of paragraph (7) of that subdivision, shall apply.

(g) (1) (A) Credit under this section and Section 23623 *of this code and Division 3.5 (commencing with Section 28960) of Title 4 of the Corporations Code* shall be allowed only for credits claimed on timely filed original returns received by the Franchise Tax Board on or before the ~~cut-off~~ *cutoff* date established by the Franchise Tax Board.

(B) For purposes of this paragraph, the cut-off date shall be the last day of the calendar quarter within which the Franchise Tax Board estimates it will have received timely filed original returns claiming credits under this section and Section 23623 *of this code and Division 3.5 (commencing with Section 28960) of Title 4 of the Corporations Code* that cumulatively total four hundred million dollars ($400,000,000) for all taxable years.

(2) The date a return is received shall be determined by the Franchise Tax Board.

(3) (A) The determinations of the Franchise Tax Board with respect to the ~~cut-off~~ *cutoff* date, the date a return is received, and whether a return has been timely filed for purposes of this subdivision may not be reviewed in any administrative or judicial ~~proceeding~~ *proceeding.*

(B) Any disallowance of a credit claimed due to a determination under this subdivision, including the application of the limitation specified in paragraph (1), shall be treated as a mathematical error appearing on the return. Any amount of tax resulting from such disallowance may be assessed by the Franchise Tax Board in the same manner as provided by Section 19051.

(4) The Franchise Tax Board shall periodically provide notice on its *Internet* Web site with respect to the amount of credit under this section and Section 23623 claimed on timely filed original returns received by the Franchise Tax Board.

(h) (1) The Franchise Tax Board may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this section, including any guidelines regarding the

limitation on total credits allowable under this section and Section 23623 and guidelines necessary to avoid the application of paragraph (2) of subdivision (f) through split-ups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(2) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to this section.

(i) This section shall remain in effect only until December 1 of the calendar year after the year of the ~~cut-off~~ *cutoff* date, and as of that December 1 is repealed.

SEC. 4. Section 23623 of the Revenue and Taxation Code, as added by Section 8 of Chapter 10 of the Third Extraordinary Session of the Statutes of 2009, is repealed.

~~23623. (a) For each taxable year beginning on or after January 1, 2009, there shall be allowed as a credit against the "tax," as defined in Section 23036, three thousand dollars ($3,000) for each net increase in qualified full-time employees, as specified in subdivision (c), hired during the taxable year by a qualified employer.~~

~~(b) For purposes of this section:~~

~~(1) "Acquired" includes any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.~~

~~(2) "Qualified full-time employee" means:~~

~~(A) A qualified employee who was paid qualified wages during the taxable year by the qualified employer for services of not less than an average of 35 hours per week.~~

~~(B) A qualified employee who was a salaried employee and was paid compensation during the taxable year for full-time employment, within the meaning of Section 515 of the Labor Code, by the qualified employer.~~

~~(3) A "qualified employee" shall not include any of the following:~~

~~(A) An employee certified as a qualified employee in an enterprise zone designated in accordance with Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.~~

~~(B) An employee certified as a qualified disadvantaged individual in a manufacturing enhancement area designated in accordance with Section 7073.8 of the Government Code.~~

~~(C) An employee certified as a qualified employee in a targeted tax area designated in accordance with Section 7097 of the Government Code.~~

~~(D) An employee certified as a qualified disadvantaged individual or a qualified displaced employee in a local agency military base recovery area (LAMBRA) designated in accordance with Chapter 12.97 (commencing with Section 7105) of Division 7 of Title 1 of the Government Code.~~

~~(E) An employee whose wages are included in calculating any other credit allowed under this part.~~

~~(4) "Qualified employer" means a taxpayer that, as of the last day of the preceding taxable year, employed a total of 20 or fewer employees.~~

~~(5) "Qualified wages" means wages subject to Division 6 (commencing with Section 13000) of the Unemployment Insurance Code.~~

~~(6) "Annual full-time equivalent" means either of the following:~~

~~(A) In the case of a full-time employee paid hourly qualified wages, "annual full-time equivalent" means the total number of hours worked for the taxpayer by the employee (not to exceed 2,000 hours per employee) divided by 2,000.~~

~~(B) In the case of a salaried full-time employee, "annual full-time equivalent" means the total number of weeks worked for the taxpayer by the employee divided by 52.~~

~~(c) The net increase in qualified full-time employees of a qualified employer shall be determined as provided by this subdivision:~~

~~(1) (A) The net increase in qualified full-time employees shall be determined on an annual full-time equivalent basis by subtracting from the amount determined in subparagraph (C) the amount determined in subparagraph (B).~~

~~(B) The total number of qualified full-time employees employed in the preceding taxable year by the taxpayer and by any trade or business acquired by the taxpayer during the current taxable year.~~

~~(C) The total number of full-time employees employed in the current taxable year by the taxpayer and by any trade or business acquired during the current taxable year.~~

~~(2) For taxpayers who first commence doing business in this state during the taxable year, the number of full-time employees for the immediately preceding prior taxable year shall be zero.~~

~~(d) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding seven years if necessary, until the credit is exhausted.~~

~~(e) Any deduction otherwise allowed under this part for qualified wages shall not be reduced by the amount of the credit allowed under this section.~~

~~(f) For purposes of this section:~~

~~(1) All employees of the trades or businesses that are treated as related under either Section 267, 318, or 707 of the Internal Revenue Code shall be treated as employed by a single taxpayer.~~

~~(2) In determining whether the taxpayer has first commenced doing business in this state during the taxable year, the provisions of subdivision (f) of Section 17276, without application of paragraph (7) of that subdivision, shall apply.~~

~~(g) (1) (A) Credit under this section and Section 17053.80 shall be allowed only for credits claimed on timely filed original returns received by the Franchise Tax Board on or before the cut-off date established by the Franchise Tax Board.~~

~~(B) For purposes of this paragraph, the cut-off date shall be the last day of the calendar quarter within which the Franchise Tax Board estimates it will have received timely filed original returns claiming credits under this section and Section 17053.80 that cumulatively total four hundred million dollars ($400,000,000) for all taxable years.~~

~~(2) The date a return is received shall be determined by the Franchise Tax Board.~~

~~(3) (A) The determinations of the Franchise Tax Board with respect to the cut-off date, the date a return is received, and whether a return has been timely filed for purposes of this subdivision may not be reviewed in any administrative or judicial proceeding.~~

~~(B) Any disallowance of a credit claimed due to a determination under this subdivision, including the application of the limitation specified in paragraph (1), shall be treated as a mathematical error appearing on the return. Any amount of tax resulting from such disallowance may be assessed by the Franchise Tax Board in the same manner as provided by Section 19051.~~

~~(4) The Franchise Tax Board shall periodically provide notice on its Web site with respect to the amount of credit under this section and Section 17053.80 claimed on timely filed original returns received by the Franchise Tax Board.~~

~~(h) (1) The Franchise Tax Board may prescribe rules, guidelines or procedures necessary or appropriate to carry out the purposes of this section, including any guidelines regarding the limitation on total credits allowable under this section and Section 17053.80 and guidelines necessary to avoid the application of paragraph (2) of subdivision (f) through split-ups, shell corporations, partnerships, tiered ownership structures, or otherwise.~~

~~(2) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to this section.~~

~~(i) This section shall remain in effect only until December 1 of the calendar year after the year of the cut-off date, and as of that December 1 is repealed.~~

SEC. 5. Section 23623 of the Revenue and Taxation Code, as added by Section 8 of Chapter 17 of the Third Extraordinary Session of the Statutes of 2009, is amended to read:

23623. (a) For each taxable year beginning on or after January 1, 2009, there shall be allowed as a credit against the "tax," as defined in Section 23036, three thousand dollars ($3,000) for each net increase in qualified full-time employees, as specified in subdivision (c), hired during the taxable year by a qualified employer.

(b) For purposes of this section:

(1) "Acquired" includes any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(2) "Qualified full-time employee" means:

(A) A qualified employee who was paid qualified wages during the taxable year by the qualified employer for services of not less than an average of 35 hours per week.

(B) A qualified employee who was a salaried employee and was paid compensation during the taxable year for full-time employment, within the meaning of Section 515 of the Labor Code, by the qualified employer.

(3) A "qualified employee" shall not include any of the following:

(A) An employee certified as a qualified employee in an enterprise zone designated in accordance with Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(B) An employee certified as a qualified disadvantaged individual in a manufacturing enhancement area designated in accordance with Section 7073.8 of the Government Code.

(C) An employee certified as a qualified employee in a targeted tax area designated in accordance with Section 7097 of the Government Code.

(D) An employee certified as a qualified disadvantaged individual or a qualified displaced employee in a local agency military base recovery area (LAMBRA) designated in accordance with Chapter 12.97 (commencing with Section 7105) of Division 7 of Title 1 of the Government Code.

(E) An employee whose wages are included in calculating any other credit allowed under this part.

(4) "Qualified employer" means a taxpayer that, as of the last day of the preceding taxable year, employed a total of 20 or fewer employees.

(5) "Qualified wages" means wages subject to Division 6 (commencing with Section 13000) of the Unemployment Insurance Code.

(6) "Annual full-time equivalent" means either of the following:

(A) In the case of a full-time employee paid hourly qualified wages, "annual full-time equivalent" means the total number of hours worked for the taxpayer by the employee (not to exceed 2,000 hours per employee) divided by 2,000.

(B) In the case of a salaried full-time employee, "annual full-time equivalent" means the total number of weeks worked for the taxpayer by the employee divided by 52.

(c) The net increase in qualified full-time employees of a qualified employer shall be determined as provided by this subdivision:

(1) (A) The net increase in qualified full-time employees shall be determined on an annual full-time equivalent basis by subtracting from the amount determined in subparagraph (C) the amount determined in subparagraph (B).

(B) The total number of qualified full-time employees employed in the preceding taxable year by the taxpayer and by any trade or business acquired by the taxpayer during the current taxable year.

(C) The total number of full-time employees employed in the current taxable year by the taxpayer and by any trade or business acquired during the current taxable year.

(2) For taxpayers who first commence doing business in this state during the taxable year, the number of full-time employees for the immediately preceding prior taxable year shall be zero.

(d) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding seven years if necessary, until the credit is exhausted.

(e) Any deduction otherwise allowed under this part for qualified wages shall not be reduced by the amount of the credit allowed under this section.

(f) For purposes of this section:

(1) All employees of the trades or businesses that are treated as related under either Section 267, 318, or 707 of the Internal Revenue Code shall be treated as employed by a single taxpayer.

(2) In determining whether the taxpayer has first commenced doing business in this state during the taxable year, the provisions of subdivision (f) of Section 17276, without application of paragraph (7) of that subdivision, shall apply.

(g) (1) (A) Credit under this section and Section 17053.80 *of this code and Division 3.5 (commencing with Section 28960) of Title 4 of the Corporations Code* shall be allowed only for credits claimed on timely filed original returns received by the Franchise Tax Board on or before the cut-off date established by the Franchise Tax Board.

(B) For purposes of this paragraph, the cut-off date shall be the last day of the calendar quarter within which the Franchise Tax Board estimates it will have received timely filed original returns claiming credits under this section and Section 17053.80 *of this code and Division 3.5 (commencing with Section 28960) of Title 4 of the Corporations Code* that cumulatively total four hundred million dollars ($400,000,000) for all taxable years.

(2) The date a return is received shall be determined by the Franchise Tax Board.

(3) (A) The determinations of the Franchise Tax Board with respect to the cut-off date, the date a return is received, and whether a return has been timely filed for purposes of this subdivision may not be reviewed in any administrative or judicial proceeding.

(B) Any disallowance of a credit claimed due to a determination under this subdivision, including the application of the limitation specified in paragraph (1), shall be treated as a mathematical error appearing on the return. Any amount of tax resulting from such disallowance may be assessed by the Franchise Tax Board in the same manner as provided by Section 19051.

(4) The Franchise Tax Board shall periodically provide notice on its *Internet* Web site with respect to the amount of credit under this section and Section 17053.80 claimed on timely filed original returns received by the Franchise Tax Board.

(h) (1) The Franchise Tax Board may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this section, including any guidelines regarding the limitation on total credits allowable under this section and Section 17053.80 and guidelines necessary to avoid the application of paragraph (2) of subdivision (f) through split-ups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(2) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to this section.

(i) This section shall remain in effect only until December 1 of the calendar year after the year of the cut-off date, and as of that December 1 is repealed.

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